

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

**NOTICE OF HEARING AND MOTION FOR AN ORDER
AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS**

To: Parties specified in Local Rule 9013-3.

1. Randall L. Seaver, the duly-appointed Chapter 7 Trustee in the above-referenced bankruptcy case ("**Trustee**"), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 2:00 p.m. on March 17, 2010 Courtroom No. 8 West, U.S. Bankruptcy Court, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered no later than March 12, 2010 which is five (5) days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure, and Local Rules 1070-1 and 1073-1. This is a core proceeding. This case was commenced as a voluntary Chapter 7 proceeding on June 4, 2009. The case is now pending before this Court.

5. This Motion arises under 11 U.S.C. §363(b) and (f) and Bankruptcy Rule 6004.
6. Debtor owns fifty percent (50.0%) of the shares of stock in Jacob Holdings of Nestor Falls, Inc. ("**Jacob Nestor Falls**").
7. Jacob Nestor Falls owns one hundred percent (100.0%) of the shares of stock in Shady Roost Lodge Corporation (the "**Company**").
8. The Company owns and operates a fishing camp in Ontario, Canada.
9. The Company is currently indebted to Alliance Bank in the approximate amount of \$600,000 (the "**Alliance Bank Liability**").
10. The Company is currently indebted to Michael Holdings, LLC in the approximate amount of \$300,000 (the "**Michael Holdings Liability**").
11. The Trustee seeks to take, or consent to, the corporate actions necessary to cause Jacob Nestor Falls to sell to Shady Roost Holdings, Inc. ("**Buyer**") the interest of Jacob Nestor Falls in Shady Roost Lodging Corporation (the "**Company**"), including all of the shares of Company stock which Jacob Nestor Falls may own (the "**Property**") for the sum of \$100,000.00. A copy of the proposed Purchase Agreement is attached hereto as Exhibit A.
12. The sale will be free and clear of the interests of any parties. The net proceeds of the sale would be subject to any secured party's interests and would be held in the Trustee's trust account subject to further order of the Court.
13. The Trustee has investigated the financial affairs of the Company and believes, given said review, that the sum of \$100,000.00 plus assumption by Buyer of the Alliance Liability, the Michael Holdings Liability and all other liabilities of the Company as set forth in Section 3 of the purchase agreement for the sale is a fair purchase price.

14. The Trustee's consent to the sale is conditioned upon \$50,000.00 (or one-half of the purchase price) being paid to "Randall L. Seaver, Trustee."

15. The Trustee does not believe that any party holds a perfected non-avoidable security interest in the Property. There are no UCC financing statements of record that cover Jacob Nestor Falls' interests in the Company.

16. Pursuant to Local Rule 9013-2(c), the Trustee gives notice that he may, if necessary, testify at the hearing regarding the proposed sale.

WHEREFORE, the Trustee moves the Court for an order authorizing the Trustee to cause Jacob Nestor Falls to sell the Property to Shady Roost Holdings, Inc. with the Trustee receiving \$50,000.00 for said consent and with the sale being free and clear of interests and granting such other relief as the Court may deem just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

/e/ Matthew R. Burton

Dated: February 24, 2010

By _____
Matthew R. Burton, #210018
Attorneys for Randall L. Seaver, Trustee
100 South Fifth Street, Suite 2500
Minneapolis, Minnesota 55402
(612) 332-1030

VERIFICATION

I, Randall L. Seaver, Trustee of the Bankruptcy Estate of Dennis E. Hecker, the moving party named in the foregoing Notice of Hearing and Motion for an Order Authorizing Sale of Assets Free and Clear of Liens, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

/e/ Randall L. Seaver

Dated: February 24, 2010

Randall L. Seaver, Trustee

416505

PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into effective as of ___ day of March, 2010, by and between Shady Roost Holdings, Inc., a Minnesota corporation (“Buyer”) and Jacob Holdings of Nester Falls, Inc., a Minnesota corporation (“Seller”).

WITNESSETH:

WHEREAS, the Seller is the current owner of the Shady Roost Lodge Corporation (“Shady Roost”) as evidenced by (1) investments and advances made to Shady Roost as reflected on Seller’s December 31, 2009 schedule of assets, and 2 those certain share certificates numbers 2 and 3 (“Shady Roost Shares”), copies of which are attached as **Exhibit 1** and incorporated by reference (collectively, the “Shady Roost Interests”);

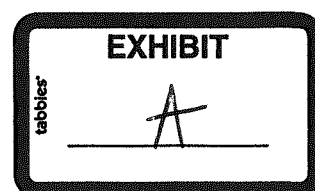
WHEREAS, the chapter 7 trustee for the bankruptcy estate of Dennis E. Hecker (“Hecker Estate”) must, subject to prior bankruptcy court approval, sign a Seller shareholder resolution authorizing execution of and performance under this Purchase Agreement;

WHEREAS, the Seller presently has estimated liabilities totaling approximately \$900,000, as reflected on the Seller balance sheet dated as of Closing and attached hereto as **Exhibit 2** and incorporated by reference (“Liabilities”);

WHEREAS, Seller has agreed to sell the Shady Roost Interests and Buyer has agreed to purchase the Shady Roost Interests subject to the terms and conditions of this Purchase Agreement.

NOW THEREFORE, pursuant to the foregoing recitals, which are an integral part hereof, and in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows.

1. **Sale.** Subject to the terms and upon the conditions contained in this Purchase Agreement, Buyer agrees to purchase the Shady Roost Interests from Seller, and Seller hereby agrees to sell, assign, transfer and convey the Shady Roost Interests to Buyer.
2. **Purchase Price.** In consideration of and for the Shady Roost Interests and subject to the terms hereof, Buyer agrees to make a cash payment of \$100,000 (“Cash Payment”) at Closing and to assume, without recourse to Seller, the Assumed Liabilities, as herein defined (together the Cash Payment and the Assumed Liabilities are the “Purchase Price”).
3. **Assumed Liabilities.** As of Closing, Buyer shall assume and pay and satisfy when due (i) the Liabilities; and (ii) each and every debt, claim and obligation of Seller whether known or unknown, liquidated, contingent or disputed, whenever and however arising (the “Assumed Liabilities”).



4. **Buyer's Contingencies.** The obligations of Buyer under this Agreement are contingent upon entry of an order of the United States Bankruptcy Court for the District of Minnesota on or before March 15, 2010 authorizing the chapter 7 trustee to sign a shareholder resolution authorizing the Seller sale of the Shady Roost Interests ("Order").
5. **Closing Date.** The date of the closing on the purchase and sale of the Shady Roost Interests shall occur at such time and place as may be mutually agreed upon by the parties to this Agreement but in no event later than March 25, 2010 (the "Closing"):
6. **Seller's Representations and Warranties.** Seller hereby represents and warrants to Buyer as follows:
 - a. Seller has the full power, capacity and authority to enter into this Agreement and to perform hereunder, including without limitation to transfer, assign and convey the Shady Roost Interests to Buyer hereunder. No further corporate proceedings of Seller are required to approve the execution of this Agreement or the transaction contemplated herein. This Agreement constitutes a valid and binding obligation of Seller.
 - b. The Shady Roost Interests shall be conveyed to Buyer free and clear of any interests, rights, liens, pledges, security interests, charges or other encumbrances or restrictions of any type or nature whatsoever.
 - c. The Shady Roost Interests constitute the entire interest of Seller in Shady Roost and, following the sale, assignment, transfer and conveyance of the Shady Roost Interests to Buyer at Closing, Seller will not have any interest, of any type or nature whatsoever, in Shady Roost or the assets of Shady Roost.
 - d. All of Seller's representations and warranties contained in this section and elsewhere in this Agreement are true and correct and will be true and correct upon Closing and shall survive the Closing of this transaction.
7. **Indemnification.** Buyer hereby agrees to, and shall immediately upon demand, indemnify and hold harmless the Seller, Michael Givens and the Hecker Estate (the "Indemnified Parties") from, against and in respect of (1) any liabilities, penalties, interest, costs, expenses or other damages or deficiencies suffered or incurred by the Indemnified Parties arising from or related to the Assumed Liabilities or any misrepresentation or breach of performance of any agreement or covenant on the part of the Buyer under this Agreement or from any misrepresentation and (2) all actions, suits, proceedings, demands, judgments, costs and expenses including, without limitation, reasonable attorneys' fees incident to any of the foregoing. The Buyer shall reimburse the Indemnified Parties, on demand, for any reasonable payment made at any time in respect of any valid liability, obligation or claim to which the foregoing indemnity relates. This section shall survive the Closing of this transaction.
8. **Seller's Closing Deliveries.** At Closing, the Seller shall deliver or cause to be delivered the following documents:

- a. An executed Warranty Bill of Sale in the form attached hereto as **Exhibit 3**;
 - b. Copies of the resolution(s) by which the appropriate representatives of the Seller approve the sale of the Shady Roost Interests as contemplated by this Purchase Agreement, together with a certificate executed on behalf of the Seller by its Secretary certifying to the Buyer that such copies are true, correct and complete copies of such resolutions and that such resolutions are duly adopted and have not been amended or rescinded; and
 - c. All other documents reasonably determined by Buyer to be necessary to transfer the Shady Roost Interests to Buyer pursuant to the terms of this Purchase Agreement.
9. **Buyer's Closing Deliveries.** At Closing, the Buyer shall deliver or cause to be delivered the following:
- a. Payment of the Cash Payment in the form of a cashier's check; and
 - b. Copies of the resolutions by which the members of the Buyer approve the acquisition of the Shady Roost Interests contemplated by this Purchase Agreement, together with a certificate executed on behalf of the Buyer by its Secretary certifying to the Seller that such copies are true, correct and complete copies of such resolutions and that such resolutions are duly adopted and have not been amended or rescinded; and
 - c. All other documents reasonably determined by Seller to be necessary to transfer the Acquired Assets to Buyer pursuant to the terms of this Agreement.
10. **Miscellaneous.**
- a. From time to time following the execution of this Agreement, each of Buyer and Seller shall execute, deliver and acknowledge such further documents or instruments and perform such further acts or deeds as may be reasonably necessary to consummate the transactions contemplated by this Agreement and carry out the purposes and intent of this Agreement.
 - b. This Agreement shall inure to the benefit of and shall be binding upon Buyer and Seller and each of their respective successors and assigns; provided, however, that neither party may assign their rights or delegate their obligations under this Agreement without the prior written consent of the other party.
 - c. This Agreement contains the entire understanding of Buyer and Seller with respect to the subject matter addressed herein and supersedes all prior agreements, discussions, negotiations and understandings between Buyer and Seller with respect to such subject matter.

- d. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.
- e. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota (without regard to the provisions thereof which concern conflicts of laws) and any proceeding related to a dispute arising in connection with this Agreement shall be brought exclusively in the State or Federal Courts in Hennepin County, Minnesota.
- f. Seller agrees that breach of this Agreement by Seller will cause Buyer irreparable harm for which there is no adequate remedy of law and, without limiting whatever other rights and remedies Buyer may have, Buyer is entitled to the remedy of specific performance to enforce this Agreement and Seller consents to the issuance of an order by a court of competent jurisdiction requiring the specific performance of this Agreement by Seller.
- g. If any action, lawsuit or proceeding is initiated under this Agreement by reason of any parties breach of this Agreement or failure to perform as provided hereunder, then, the prevailing party in such action, lawsuit or proceeding shall be entitled to recover, and the non-prevailing party agrees to pay all attorneys' fees, court costs, filing fees, deposition costs and similar expenses incurred by the prevailing party. Such recovery of fees and costs shall be in addition to any and all other remedies available hereunder, at law or in equity.
- h. It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement.
- i. The recitals are incorporated and made a part of this Agreement.
- j. The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the day and year first above written. The individuals signing below on behalf of Seller and Buyer represent and warrant that they have the authority to bind the applicable party to this Agreement.

SHADY ROOST HOLDINGS, INC.,
a Minnesota corporation

By _____

Its _____

JACOB HOLDINGS OF NESTER FALLS, INC.,
a Minnesota corporation

By _____

Its _____

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2010, I caused the following documents:

Notice of Hearing and Motion for an Order Authorizing Sale of Assets Free and Clear of Liens and Order (Proposed)

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

- Patti H Bass ecf@bass-associates.com
- Bruce H. Carlson bruce.carlson@mlcfargolaw.com, tricia.fossen@mlcfargolaw.com
- Monica L. Clark clark.monica@dorseylaw.com
- Gordon B. Conn conn@kwgc-law.com
- Clinton E. Cutler ccutler@fredlaw.com, mdavis@fredlaw.com
- Stephen F Grinnell stephen.grinnell@gpmlaw.com
- Douglas W. Kassebaum dkassebaum@fredlaw.com,
scharter@fredlaw.com;bankruptcy@fredlaw.com
- Jeffrey D. Klobucar jklobucar@foleymansfield.com
- Connie Lahn connie.lahn@fmjlaw.com, Aong.Moua@fmjlaw.com
- Thomas Lallier tlallier@foleymansfield.com
- Joseph W. Lawver jlawver@messerlikramer.com, mnygaard@messerlikramer.com
- Nauni J Manty ecf@mantylaw.com
- Michael L Meyer mlmeyer@ravichmeyer.com
- Ralph Mitchell rmitchell@lapplibra.com, jpipp@lapplibra.com

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- Robert G. Parish rparish@faegre.com
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mpocock@hinshawlaw.com;kmoore@hinshawlaw.com
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- Randall L. Seaver rlseaver@fullerseaverramette.com, rseaver@ecf.epiqsystems.com
- Brad A Sinclair bsinclair@serklandlaw.com, crohr@serklandlaw.com
- Rebecca G. Sluss rsluss@oppenheimer.com
- Matthew A Swanson matthew.swanson@leonard.com, callie.sanford@leonard.com
- US Trustee ustpreion12.mn.ecf@usdoj.gov

I further certify that I caused a copy of the foregoing documents to be faxed, e-mailed and/or mailed by first class mail, postage paid, to the following:

SEE ATTACHED SERVICE LIST

Dated: February 24, 2010

/e/ Jill L. Thorvig

Jill L. Thorvig
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 332-1030

416507

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LAS VEGAS,, NV 89121

ACE INSURANCE COMPANY
P.O. BOX 294836
CLEVELAND OH 44101

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CROSSLAKE MN 56442

ALLEN EIDE
3221 32ND AVENUE SOUTH
SUITE 900
GRAND FORKS ND 58201

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1060 DAKOTA DRIVE
MENDOTA HEIGHTS MN 55120

AMERICAN EXPRESS
P. O. BOX 0001
LOS ANGELES CA 90096

AMERICAN NAT'L BANK OF MN
7638 WOIDA RD
BAXTER MN 56425

ANCHOR BANK
1570 CONCORDIA AVE
SAINT PAUL MN 55104

ANCHOR BANK
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MADISON WI 53707

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GRAND ISLAND NE 68802

AXLE CAPITAL, LLC / SAGECREST
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55368

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SUITE 350
SOUTH ST. PAUL MN 55075

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80 SOUTH EIGHTH STREET
MINNEAPOLIS MN 55402

C AND C BOAT WORKS
36448 CTY RD 66
CROSSLAKE MN 56442

CA BOARD OF EQUALIZATION
PO BOX 942879
SACRAMENTO CA 94279-7072

CA DEPT OF MOTOR VEHICLES
PO BOX 942869
SACRAMENTO CA 94269-0001

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WAYZATA MN 55391

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MINNEAPOLIS MN 55440

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WICHITA KS 67277

CHRYSLER FINANCIAL
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STE. 700
ENGLEWOOD CO 80111-4979

CITY OF ASPEN
130 S. GALENA ST.
ASPEN CO 81611

CITY OF BAYPORT
294 N. 3RD STREET
BAYPORT MN 55003

CITY OF MEDINA
2052 CO RD 24
HAMEL MN 55340

COMMUNITY NATIONAL BANK
845 EAST COUNTY ROAD E
VADNAIS HEIGHTS MN 55127

D&H DOCKS
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NISSWA, MN 56468

COOPERATIVE POWER
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TWO HARBORS MN 55616

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2627 SOUTH UNIVERSITY
FARGO ND 58103

CROSSLAKE PROPERTY
SOLUTIONS
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CROSSLAKE MN 56442

CROW WING COUNTY
TREASURER
JUDICIAL CENTER
213 LAUREL ST
BRainerd MN 56401

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724 W. WASHINGTON STREET
BRainerd MN 56401

DON GILBERT
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HUDSON WI 54016

DONALD M HALSTEAD III
15626 SUNSET WAY
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ELIZABETH A JOHNSON
PO BOX 624
PINE RIVER MN 56474

ENCORE BANK
3003 TAMiami TRAIL NORTH, #100
NAPLES FL 34103

EXXONMOBILE OIL
CORPORATION
ATTN JENNIFER FRASER
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SAINT JOHN NB CANADA E2J 1M5

FAMILY HOLDINGS OF MN LLC
11614 ECHO BAY DRIVE
CROSSLAKE MN 56442

FIFTH THIRD BANK
C/O RICHARD J. SWIFT, JR.
GARLICK STETLER & SKRIVIAN
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#100
NAPLES FL 34109

GE CAPITAL
1415 WEST 22ND STREET, SUITE
600
OAKBROOK IL 60523

GE CAPITAL, FLEET SERVICES
3 CAPITAL DRIVE
EDEN PRAIRIE MN 55344

GELCO CORPORATION
THREE CAPITAL DRIVE
ATTN: GENERAL COUNSEL
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COSTA MESA CA 92626

GEMB LENDING, INC.
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IRVINE CA 92619

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GMAC MORTGAGE
P.O. BOX 4622
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HECKER, SANDRA
13755 - 84TH PL N
MAPLE GROVE MN 55369

HENNEPIN COUNTY TREASURER
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3799 HWY 82
GLENWOOD SPRINGS CO 81602

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1016 CIVIC CENTER DR NW
STE 300
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Ravich, Meyer, Kirkman, McGrath,
Nauman & Tansey, P.A.
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JORDAN MN 55352

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STATE OF MINNESOTA DEPT OF
REVENUE
600 NORTH ROBERT STREET
ST. PAUL MN 55101

STORCHECK CLEANERS
857 7TH STREET
ST. PAUL MN 55106

SUMMERS PROPERTY
MANAGEMENT
111K AABC
ASPEN CO 81611

TCF NATIONAL BANK
801 MARQUETTE AVENUE
MINNEAPOLIS MN 55402

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C/O MARK W. RUSSELL ESQ
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TOYOTA FINANCIAL SAVINGS
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2485 VILLAGE VIEW DRIVE
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HENDERSON NV 89074

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TOYOTA MOTOR CREDIT CORP
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LOAN ADJUSTMENT GROUP
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WELLS FEDERAL BANK
53 FIRST ST. SW
WELLS MN 56097

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INVER GROVE INVESTMENTS, INC.
500 FORD ROAD
MINNEAPOLIS, MN 55426

JACOB PROPERTIES OF MINNESOTA
500 FORD ROAD
MINNEAPOLIS, MN 55426

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

**ORDER AUTHORIZING SALE OF ASSETS OF DEBTOR
FREE AND CLEAR OF INTERESTS**

The above matter came before the court on the motion of Randall L. Seaver, trustee seeking an order authorizing sale of assets free and clear of interests.

Based upon all the files, records and proceedings herein, and the court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. The trustee is authorized to consent to, and to take corporate actions necessary to cause Jacob Holdings of Nestor Falls, Inc. to sell to Shady Roost Holdings, Inc. all of Jacob Holdings of Nestor Falls, Inc.'s interest in Shady Roost Lodge Corporation including the stock of Shady Roost Lodge Corporation held by Jacob Holdings of Nestor Falls, Inc. for the sum of \$100,000.00, plus assumption by Shady Roost Holdings, Inc. of all of the liabilities of Shady Roost Lodge Corporation as set forth in section 3 of the purchase agreement for the sale.

2. The property and rights sold shall be free and clear of any interest in such property pursuant to 11 U.S.C. §363(b) and (f) with such interests, if any, attaching to the proceeds of sale with the same priority, dignity and effect as such interests existed pre-petition.

3. The trustee is authorized to vote the debtor's shares in approval of the sale of the assets of the company to Shady Roost Holdings, Inc. conditioned upon the trustee receiving not less than \$50,000.00 at closing.

4. The proceeds shall be deposited in the trustee's account and held subject to further order of the court.

5. Notwithstanding Fed. R. Bankr. P. 6004(g), this order is effective immediately.

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